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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

KIMBERLY PREBLES

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CASE NO.

1:10CR 101

PLEA AGREEMENT

HONORABLE

WEBER

Under Rule 11 of the Federal Rules of Criminal Procedure, the government, the defendant, and the defendant's counsel enter into the following plea agreement. Any reference to the United States or the government in this agreement shall mean the Office of the United States Attorney for the Southern District of Ohio.

1. The defendant agrees to plead guilty to Counts One and Two of the Information, waiving prosecution by indictment, charging her with wire fraud, in violation of 18 U.S.C. § 1343, and filing a false tax return, in violation of 26 U.S.C. § 7206(1), arising from the defendant's scheme to defraud her employer ClarkWestern Building Systems, Inc. of approximately \$4,315,755.00. The defendant also failed to report the \$4,315,755.00 as income to the Internal Revenue Service. The defendant further acknowledges her waiver of rights, as set forth in paragraph 5 of this agreement.

2. The defendant agrees to pay the special victims/witness assessment in the amount of \$200 before the time of sentencing and shall provide a receipt from the Clerk to the government before sentencing as proof of this payment.

3. The defendant agrees to pay a fine and restitution as ordered by the Court and not to contest forfeiture whether civil, criminal, or administrative. The defendant further agrees that

restitution, fine, assessment, tax, interest on unpaid taxes, forfeiture, or other payments in this case do not, in and of themselves, constitute extraordinary acceptance of responsibility. The defendant agrees that she will continue to cooperate fully with any forfeiture matters.

4. The defendant understands that this agreement permitting a guilty plea to the information requires that the defendant abide by each term of this agreement. The defendant understands that if the defendant makes any statement that is materially false in whole or in part or otherwise fails to comply with any term of this agreement, the United States has the right to declare this agreement void and to prosecute the defendant to the full extent of the law, and that she will be subject to prosecution for any criminal violation including, but not limited to, any crimes or offenses contained in or related to the Information, as well as perjury and obstruction of justice. If this plea agreement or the defendant's conviction upon her guilty plea is voided for any reason, the defendant waives any statute of limitations with respect to the United States prosecuting her for any offense arising from her conduct in this case.

5. The defendant understands her rights:

- a. to be represented by an attorney at every stage of the proceeding, and that, if necessary, one will be appointed to represent him;
- b. to plead not guilty and to be tried by a jury;
- c. to be assisted by counsel during such trial;
- d. to confront and cross-examine adverse witnesses;
- e. to use compulsory process to summon witnesses for the defense;
- f. not to be compelled to testify;

- g. to be presumed innocent throughout trial until and unless found guilty by a jury by proof beyond a reasonable doubt.

6. The defendant understands that if her guilty plea is accepted by the Court there will not be a trial of any further kind, so that by pleading guilty she waives, or gives up, her right to a trial and all the other rights set forth in Paragraph 5, above, except the right to be represented by an attorney.

7. The defendant understands, agrees and has had explained to her by counsel the following statutory maximum sentences:

Count 1 (wire fraud): 20 years imprisonment, a \$250,000 fine, a three-year period of supervised release, and a \$100 special assessment; and

Count 2 (filing false tax return): three years imprisonment, a \$250,000 fine, the cost of prosecution, a one-year period of supervised release, and a \$100 special assessment.

Total Statutory Maximum Penalty: 23 years imprisonment, a \$500,000 fine, the cost of prosecution, a three-year period of supervised release, and a \$200 special assessment.

The defendant further understands that mandatory restitution in the amount of at least \$4,315,755.00 will be ordered for the guilty plea to Count 1, wire fraud, and mandatory restitution of at least \$829,207.77 will also be ordered by the Court to be paid to the Internal Revenue Service for the guilty plea to Count 2.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased. Thus, a violation of supervised release can increase the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

8. The defendant understands that nothing in this plea agreement authorizes her to commit any crime, and that this plea agreement does not protect her from any later prosecution for perjury, making a false statement, obstruction of justice, or any other such criminal charges based on any conduct that may occur after the date of this plea agreement.

9. The sentence in this case will be imposed by the Court. There is no agreement as to what that sentence will be. Sentencing in this case will be imposed pursuant to the Sentencing Reform Act of 1984 and the advisory United States Sentencing Guidelines ("U.S.S.G."). The defendant has thoroughly reviewed with her attorney how the Sentencing Guidelines might apply to this case. The defendant understands that no one can predict with certainty what Guideline range will be applicable in this case until after a presentence investigation has been completed and the Court has ruled on the results of that investigation. The defendant understands that she does not have the right to withdraw her guilty plea if the applicable Guideline range is higher than expected or if the Court departs from the applicable Guideline range.

10. Pursuant to U.S.S.G. § 6B1.4, the parties enter into the following stipulations under the Sentencing Guidelines Manual effective November 1, 2009. It is understood and agreed that: (1) the parties are free to argue the applicability or non-applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments and departures; (2) these stipulations are not binding upon either the Probation Department or the Court; and (3) the Court may make factual and legal determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed:

(a) The parties agree and stipulate that: the readily provable fraud loss caused by

the defendant was \$4,315,755.00; this amount was reasonably foreseeable to the defendant in connection with the scheme; and the defendant's Guideline range should be calculated based on this amount pursuant to U.S.S.G. § 1B1.3.

- (b) The parties agree and stipulate that: the readily provable tax fraud loss caused by the defendant was \$829,207.77; this amount was reasonably foreseeable to the defendant in connection with the scheme; and the defendant's Guideline range should be calculated based on this amount pursuant to U.S.S.G. § 1B1.3.
- (c) The parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for her offense making the defendant eligible for a 2-level downward adjustment under U.S.S.G. § 3E1.1(a).
- (d) The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of her own misconduct by timely notifying the government of her intent to plead guilty and timely providing complete information about her own involvement in the offense making the defendant eligible for an additional 1-level downward adjustment under U.S.S.G. § 3E1.1(b).

11. The defendant further agrees that she is not a prevailing party as defined by the Hyde Amendment, Public Law 105-119, Title VI, Nov. 26, 1997 (set forth as a statutory note under 18 U.S.C. § 3006A) and hereby expressly waives filing any suit or asserting any claim against the United States, including its agents and employees, under said provision.

12. In the event the defendant does not plead guilty, or seeks to withdraw her guilty plea,

or does withdraw her guilty plea, the defendant hereby waives any protection afforded by Section 1B1.8(a) of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence.

13. In exchange for the undertakings made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law, unless the sentence exceeds the maximum permitted by statute or the government appeals the sentence.

14. By signing this document, the defendant acknowledges the truth of the attached Statement of Facts which is made a part of the plea agreement and submitted as evidence.

15. The defendant understands that this agreement does not resolve any civil liability that may arise as a result of the conduct described in Count Two of the Information. This agreement does not resolve any civil liability of the defendant for tax, interest, and penalties relating to his individual federal income tax for tax years 2005-2008. The defendant will make no objection to the entry of an order under Fed.R.Crim.P. 6(e)(3) permitting the Internal Revenue Service Criminal Investigation Division to disclose to the Internal Revenue Service Examination Collection Division (for purposes of a civil audit) all documents obtained, and the Internal Revenue Service reports produced, during the criminal investigation, whether or not, such documents and reports are grand jury material within the meaning of Fed.R.Crim.P. 6(e) or are otherwise prohibited from being disclosed.

16. This written document embodies all of the agreements and understandings reached

between the United States and the defendant. No other conversations, discussions, understandings, or other documents extraneous to this plea agreement shall be considered part of this plea agreement. By signing this plea agreement, defendant acknowledges that she has fully discussed all of its terms with her counsel and understands and accepts each of those terms knowingly and voluntarily, and that she is fully satisfied with the representation and assistance of her defense attorney in this criminal case.

17. This plea agreement binds only the United States Attorney for the Southern District of Ohio and does not bind any other federal, state, or local prosecuting authority.

18. The plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence this Court will impose, other than as described in this agreement.

8/4/10
Date

CARTER M. STEWART
United States Attorney




JENNIFER C. BARRY
Assistant United States Attorney
Counsel for United States
221 E. 4th Street; Suite 400
Cincinnati, Ohio 45202

6/7/10
Date


KIMBERLY PREBLES
Defendant

6/7/10
Date


WILLIAM R. GALLAGHER, Esq.

Counsel for Defendant

STATEMENT OF FACTS

From approximately February 1999 through March 2009, defendant Kimberly Prebles was employed by ClarkWestern Building Systems, Inc., (ClarkWestern), Middletown, Ohio. The defendant worked most recently as an accounting manager in the accounts payable department. One of her responsibilities was making timely payments on invoices from ClarkWestern's vendors. Therefore, the defendant was familiar with her employer's vendors, their payment history, and accounts from which and to which they were paid.

In approximately June 1999, the defendant went to Fifth Third Bank and opened an business checking account in the name of PTG using her home mailing address. PTG Logistics, LLC had a vendor relationship with ClarkWestern. PTG Logistics had no knowledge of the account and did not authorize the account to be opened. The defendant provided false statements to Fifth Third Bank when she opened the account by stating that PTG was a sole proprietorship and that she was the President and sole signatory on the account.

After opening the unauthorized PTG account, the defendant began to alter and falsify ClarkWestern company records in order to illegally divert and embezzle funds by writing checks and causing automated clearing house (ACH) and wire transfers to be made from a ClarkWestern business bank account at U.S. Bank (formerly Firststar Bank) into the unauthorized PTG account which she exclusively controlled. She also made false representations to ClarkWestern's controller by fraudulently representing that certain PTG Logistics invoices had not been paid, when they had, causing ClarkWestern to wire money into the unauthorized PTG account. The defendant would directly withdraw funds to pay for the purchases of real property

from the unauthorized PTG Fifth Third account that she controlled. She also transferred proceeds of the unlawful activity from the unauthorized PTG account into her personal checking account held jointly with her husband D.P. The defendant would take those illegal proceeds and pay for personal expenditures such as jewelry, clothing, travel, vehicles, and home improvements. From approximately May 2002 until approximately March 2009, the defendant embezzled \$4,315,755 of ClarkWestern's money for her personal use. The defendant acknowledges and admits that she used the same methods and process set forth above to illegally divert an unknown amount of ClarkWestern funds from approximately June 1999 until approximately April 2002.

The defendant derived additional income in each of the years she was actively involved in this scheme. Prebles willfully and knowingly failed to report the embezzled funds on her self-prepared Federal Income Tax Returns, Forms 1040 for the tax years 2005 through 2008 in the total amount of \$829,207.77.

The defendant electronically signed the returns containing a written declaration for 2005 through 2008 under penalties of perjury. The defendant knew the returns were not true and correct as to every material matter; specifically that she had intentionally omitted income that she had received in the course of her scheme to defraud ClarkWestern. The defendant willfully and intentionally withheld her true income in order to avoid paying income tax on her true income for tax years 2005 through 2008.

As a result, defendant Prebles filed Federal Forms 1040 that she knew to be false for each the years 2005 through 2008. The total loss to the Internal Revenue Service as a result of the false returns filed by defendant Kimberly Prebles is \$829,207.77.

The aforementioned conduct occurred in the Southern District of Ohio.

I HAVE REVIEWED THIS STATEMENT OF FACTS WITH MY ATTORNEY, WILLIAM R. GALLAGHER, ESQ., AND I AGREE THAT EVERYTHING STATED HEREIN IS TRUE AND CORRECT. I UNDERSTAND THAT THIS STATEMENT OF FACTS WILL BE SUBMITTED TO THE COURT AS EVIDENCE RELATING TO THE CHARGES FILED HEREIN. THIS STATEMENT OF FACTS IS NOT EXHAUSTIVE BUT ARE FACTS THAT ESTABLISH THE ELEMENTS OF THE OFFENSES FOR WHICH I AM CHARGED.

6/7/10
Date

Kimberly Prebles
KIMBERLY PREBLES
Defendant